

REMARKS/ARGUMENTS

Claims 1-49 are pending in the application. The Examiner has rejected claims 20-31 and 43-48. The Examiner has allowed claims 1-19, 32-42 and 49. Applicant has amended claim 43. Applicant respectfully requests reconsideration of pending claims 20-31 and 43-48.

The Examiner has rejected claims 20-31 and 43-48 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully disagrees.

Regarding claim 20, lines 3-13, the Examiner states "performing a first transmission unit counting process for determining a first datapath ingress transmission unit count and a first datapath egress transmission unit count of a datapath...during the first duration" is not clear whether the first datapath ingress transmission unit count and the first datapath egress transmission unit count in the same or different counting location of the datapath. Firstly, it is not clear to Applicant what the Examiner means by "...whether...in the same or different counting location of the datapath." Secondly, Applicant notes the Examiner substantively examined claim 20 and issued a first Office action prior to the present Office action without finding claim 20, which Applicant has not amended since the filing of the present application, to be indefinite. Thirdly, Applicant notes breadth of a claim is not to be equated with indefiniteness. *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). Applicant notes "counting location of the datapath" is not a limitation recited in the claim. Thus, Applicant submits a rejection under 35 U.S.C. § 112, second paragraph, is improper as to a limitation not recited in the claim. Therefore, Applicant submits claim 20 is in condition for allowance.

Regarding claims 21-31, the Examiner states, "these claims are rejected because they dependent upon the rejected base claim." Applicant has submitted argument for the allowability of claim 20. Therefore, Applicant submits claims 21-31 are also in condition for allowance.

Regarding claim 43, lines 4 and 9, the Examiner states, "'capable of' a positive term should be used. Applicant notes the Examiner substantively examined claim 43 and issued a first Office action prior to the present Office action without finding claim 43, which Applicant has not amended since the filing of the present application (except for now correcting a typographical error by adding a period to the end of the claim), to be indefinite. Moreover, Applicant notes USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d

1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Accordingly, Applicant submits a rejection of claim 43 under 35 U.S.C. § 112, second paragraph, is improper. Regarding claim 43, line 11, the Examiner states, "there is no period at the end of the claim." Applicant has amended claim 43 to correct the typographical error by adding a period at the end of the claim. Applicant submits the amendment is merely cosmetic and adds no new matter to the claim. Thus, Applicant submits claim 43 is in condition for allowance.

Regarding claims 43-48, the Examiner states, "these claims are rejected because they dependent upon the rejected base claim." Applicant has submitted argument for the allowability of claim 43. Therefore, Applicant submits claims 43-48 are also in condition for allowance.

The Examiner has rejected claim 43 under 35 U.S.C. §103(a) as allegedly being unpatentable over MacKay (US Patent No. 4,052,566) in view of Pauwels (US Patent No. EP 1 109 366 A1) as applied to claims 1-42 and 49 above, and further in view of Matsunga et al. (US Patent No. 6,115,417) (per paragraph 3 of the Office action dated June 17, 2006. Applicant respectfully disagrees.

Regarding claim 43, Applicant notes the Examiner alleges element 40 of the MacKay reference teaches "a first transmission unit counter" and element 70 of the MacKay reference teaches "a second transmission unit counter." However, Applicant notes the MacKay reference states, in col. 3, lines 11-15, "The connector 37 is connected to a reset terminal of a counter 40 which counter is connected by the connector 31 to count the clock pulses of the clock 25 in the transmitter 12A." Thus, Applicant submits the MacKay reference fails to disclose "...wherein the first transmission unit counter set...is capable of facilitating a datapath ingress transmission unit count...."

Additionally, Applicant notes the Examiner alleges element 70 of the MacKay reference teaches "a second transmission unit counter." However, Applicant notes the MacKay reference states, in col. 3, lines 39-42, "The connector 67 is connected to a reset terminal of a counter 70 which counter is connected by the connector 61 to count the clock pulses of the clock 55 in the receiver 12D." Thus, Applicant submits the MacKay reference fails to disclose "...wherein the second transmission unit counter set...is capable of facilitating a datapath egress transmission unit count...."


In the Examiner's Response to Arguments, the Examiner states, "Examiner disagrees with applicant because it doesn't matter for the first and second transmission counter sets that are capable or

uncapable of facilitating ingress and egress transmission units counts. It does not affect the counters at the transmission units because they are just capable of but not used for counting the ingress and egress transmission unit counts." Applicant submits the Examiner has failed to cite any basis in law or rules that would excuse the Examiner from making a *prima facie* showing of obviousness.

Furthermore, while the Examiner appears to have failed to make a *prima facie* showing of obviousness by failing to alleged teachings as to the subject matter recited in the claim, Applicant submits that the MacKay reference cited by the Examiner teaches away from the subject matter of the claim (in col. 3, lines 11-15, as noted above). Thus, Applicant submits the cited portions of the cited references fail to disclose or suggest the subject matter of claim 43. Applicant further submits the subject matter of claim 43 is not a predictable variation of the teachings of the cited portions of the cited reference. Therefore, Applicant submits claim 43 is in condition for allowance.

In conclusion, Applicant has overcome all of the Office's rejections, and early notice of allowance to this effect is earnestly solicited. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,


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